

§ 700.27

7 CFR Ch. VII (1–1–06 Edition)

(c) Contracts may be modified when the participants add or delete land to the farm.

(d) Contracts may be modified to add, delete, or substitute BMPs when:

(1) The installed measure failed to achieve the desired results through no fault of the participant.

(2) The installed measure deteriorated because of conditions beyond the control of the participant.

(3) Another BMP will achieve the desired results.

(4) The extent of the BMP is changed.

(e) Contract modifications are not required when items of work are accomplished prior to scheduled completion or within 1 year following the year of scheduled completion. Other time schedule revisions will require modification.

(f) If, during the contract period, all or part of the right and interest in the land is transferred by sale or other transfer action, the contract is terminated on that portion of the contract, the participant:

(1) Forfeits all right to any future cost-share payments on the transferred portion.

(2) Must refund all cost-share payments that have been made on the transferred land unit unless the new land owner or operator becomes a party to the contract, except the payment may be retained where it is determined by the County ASC Committee after consultation with the technical agency and the CD, that the established BMPs will provide water quality benefits for the designed life of the BMP.

(g) If the new land owner or operator becomes a party to the contract:

(1) Payment which has been earned, may be made to the participant who applied the BMPs and had control prior to the transfer.

(2) The new land owner or operator is to assume all obligations of the previous participant with respect to the transferred land.

(3) The contract with the new participant is to remain in effect with the original terms and conditions, except that;

(4) The original contract is to be modified in writing to show the changes caused by the transfer. If the

modification is not acceptable to the County ASC Committee, the provisions of paragraphs (f)(1) and (2) of this section apply.

§ 700.27 Cost-share payment.

(a) *General.* Participants are to obtain or contract for materials or services as needed to install BMPs. Federal cost-share payments are to be made by the County ASC Committee upon certification by the District Conservationist, SCS, or designee, that the BMPs, or an identifiable unit thereof, have been properly carried out and meet the appropriate standards and specifications.

(b) *Payment maximum.* The maximum RCWP cost-share payment to a participant shall be limited to \$50,000.

(c) *Basis for cost-share payment.* (1) Cost-share payments are to be made by the County ASC Committee at the cost-share percentage specified in the project approval notice and by one of the following methods as set out in the contract:

(i) Average cost; or

(ii) Actual cost but not to exceed the average cost.

(2) If the average cost at the time of starting the installation of a BMP or identifiable unit is less than the costs specified in the contract, payment is to be at the lower rate. If the costs at the start of installation are higher, payment may be made at the higher rate. A modification will be necessary if the higher cost results in a significant increase in the total cost-share obligation. Cost-share payment is not to be made until the modification reflecting the increase is approved.

(d) *Average cost development.* Average costs are to be developed by the County ASC Committee for each project using cost data from the local area. These costs shall be reviewed by the SCC for consistency with average costs in other USDA programs. These average costs shall be updated annually by the County ASC Committee in consultation with the LCC.

(e) *Application for payment.* Cost-share payments shall be made by the County ASC Committee after a participant has completed a BMP or an identifiable unit of a BMP and it is determined to

meet standards and specifications. Application for payment must be submitted to the County ASC Committee, on the prescribed form and be supported by such cost receipts as are required by the County ASC Committee. It is the participant's responsibility to apply for payments.

(f) *Authorizations for payments to suppliers.* (1) The contract may authorize that part or all of the Federal cost share for a BMP or an identifiable unit be made directly to suppliers of materials or services. The materials or services must be delivered or performed before payment is made.

(2) Federal cost shares will not be in excess of the cost share attributable to the material or service used or not in excess of the cost share for all identifiable units as may be requested by the participant.

(g) *Material inspection and analysis.* When authorizations for payments to suppliers are specified, the County ASC Committee, its representatives, or the Federal Government reserve the right to inspect, sample, and analyze materials or services prior to their use.

(h) *Assignments, set-offs, and claims.* (1) Any person who may be entitled to any cost-share may assign rights thereto in accordance with regulations governing the assignments of payments. (31 U.S.C. 203, as amended, and 41 U.S.C. 15, as amended.)

(2) If any participant to whom compensation is payable under RCWP is indebted to the United States and such indebtedness is listed on the county register of indebtedness maintained by the County ASC Committee, the compensation due the participant must be used (set-off) to reduce that indebtedness. Indebtedness to USDA is to be given first consideration. Setoffs made pursuant to this section are not to deprive the participant of any right to contest the justness of the indebtedness involved. (See 7 CFR part 13.)

(3) Any cost-share payment due any participant shall be allowed without deduction of claims for advances except as provided for above and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the participant or any other creditor.

(i) *Access to land unit and records.* The County ASC Committee, the agency

providing technical assistance or representatives thereof, shall have the right of access at reasonable times to land under application or contract, and the right to examine any program records to ascertain the accuracy of any representations made in the applications or contract.

(j) *Suspension of payments.* No cost-share payments will be made pending a decision on whether or not a contract violation has occurred.

(k) *Ineligible payments.* The filing of requests for payment for BMPs not carried out, or for BMPs carried out in such a manner that they do not meet the contract specifications, constitutes a violation of the contract.

§ 700.28 Appeals.

(a) The applicant may, prior to execution of the contract, request that the County ASC Committee review or reconsider administrative criteria being used in developing his or her contract.

(1) The applicant shall make a written request to the County ASC Committee setting forth the basis for the appeal.

(2) The County ASC Committee shall have 30 days in which to make a decision and notify the applicant in writing.

(3) The decision of the County ASC Committee may be appealed to the State ASC Committee.

(4) The State ASC Committee decision shall be final.

(b) The applicant/participant may request and receive a review by the SCS State Conservationist of criteria used in developing the water quality plan or BMP specifications.

(c) After the contract has been executed, the participant may request and receive a review of administrative procedures under the FSA appeals procedures set out in 7 CFR part 780.

§ 700.29 Contract violations.

(a) The following actions constitute a violation of the RCWP contract by a participant:

(1) Knowingly or negligently damaging or causing BMPs to become impaired.

(2) Failing to comply with the terms of the contract.

(3) Filing a false claim.